

1993

State of Utah (West Valley City) v. David W. Stokes : Brief of Appellant

Utah Court of Appeals

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West Valley City Attorney.

David W. Stokes.

Recommended Citation

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UTAH

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DOCKET NO.

930386

~~930364~~

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE UTAH COURT OF APPEALS

---ooOoo---

STATE OF UTAH (WEST VALLEY CITY)
PLAINTIFF/APPELLEE

vs.

DAVID W. STOKES
ACCUSED/APPELLANT

CASE NO. 930386-CA

PRIORITY 2

APPELLANT'S BRIEF

Appeal from Final Judgment issued in the Third Circuit Court
(West Valley Department) of Salt Lake County, State of Utah,
the Honorable Edward Watson presiding,
entered Thursday, May 6, 1993

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

West Valley City Attorney
3600 S. Constitution Blvd. (2700 West)
West Valley City, Utah 84119

FILED

31 1993

COURT OF APPEALS

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE UTAH COURT OF APPEALS

---ooOoo---

STATE OF UTAH (WEST VALLEY CITY)		
PLAINTIFF/APPELLEE		CASE NO. 930386-CA
vs.		PRIORITY 2
DAVID W. STOKES		
ACCUSED/APPELLANT		

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West Valley City, Utah 84119

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JURISDICTIONAL STATEMENT

This appeal is taken from entry of Final Judgment filed 6 May 1993 in the Third Circuit Court (West Valley City Department) of Salt Lake County, State of Utah. The Court of Appeals has jurisdiction in this matter pursuant to Utah Rules of Appellate Procedure, Rule 3(a) and 4(a).

ISSUES PRESENTED

CONSTITUTIONAL ISSUES

1. The trial court erred in denying Appellant's request for a Bill of Particulars, to clarify the nature and elements of the charges against him. This is a question of law, to be reviewed for correctness, giving no deference to the trial court's interpretations. Utah Const., art. I, sec. 12.

2. The trial court erred in denying Appellant's motion for new trial due to judicial and prosecutorial misconduct during the trial. This is a question of law, to be reviewed for correctness, giving no deference to the trial court's interpretations. Utah Const., art. I, sec. 11.

3. The trial court erred in misapplying an administrative surcharge, added to the judgment entered by the court. This is a

question of law, to be reviewed for correctness, giving no deference to the trial court's interpretations.

DETERMINATIVE PROVISIONS

1. "No person shall be deprived of life, liberty, or property, without due process of law."

Utah Const., art. I, sec. 7.

2. "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party."

Utah Const., art. I, sec. 11.

3. "In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof..."

Utah Const., art. I, sec. 12.

4. "(1)(a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures imposed by the courts ...

(2) The surcharge shall not be imposed:

(a) upon nonmoving traffic violations;

(b) upon court orders when the offender is ordered to perform community service work in lieu of paying a fine; and

(c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case under Section 78-3a-22."

Utah Code Ann. § 63-63a-1.

5. "When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to

such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged."

Utah Rules of Criminal Procedure, Rule 4(e).

Questions of law are to be reviewed for correctness, giving no deference to the trial court's interpretations.

State v. Sousa, 846 P.2d 1313, 1317 (Utah App. 1993).

STATEMENT OF CASE

This matter originated as a traffic violation proceeding filed with the Third Circuit Court, West Valley Department, on 4 February 1993, the Honorable Edward Watson presiding. Appellee filed an insufficient information which did not set forth clearly all the elements on which the prosecution was to rely, which prejudiced the Appellant's ability to prepare a defense. The Appellant requested a Bill of Particulars from Appellee, to clarify the essential elements, which request was denied by the court at trial. Due to the judicial and prosecutorial misconduct the Appellant was denied the fundamental right to a fair trial. Appellant moved the court to grant a new trial, due to the above mentioned violations of due process, which was denied by the court. The court then misapplied an administrative assessment to the final judgment. All post-judgment motions have been ruled upon and disposed of. The case has been declared cleared in the trial court.

STATEMENT OF FACTS

1. Appellant was originally charged with violating Utah Code Ann. § 41-1a-201 and Utah Code Ann. § 41-12a-301. The information submitted by Appellee charged Appellant with "Driving without insurance," West Valley City Municipal Code § 22-3-111, and "No Utah registration" Utah Code Ann. § 41-1a-201, listing no elements that Appellant could reasonably prepare a defense against, therefore the information was insufficient and vague upon its face.

2. Both before and during the trial, the prosecution exhibited misconduct by using tactics of threat and intimidation, which prejudiced Appellant's chances for having a fair trial, to which Appellant objected.

3. The trial court exhibited misconduct during the trial in threatening Appellant with contempt, rather than protecting Appellant's invocation of his 5th Amendment right.

4. Appellant moved the court for a new trial, pursuant to U.R.Cr.P. Rule 24(a), accompanied by supporting affidavit of essential facts.

5. At judgment, Appellant was assessed an administrative surcharge which did not apply, as the original charges were for non-moving violations. Appellant objected to this, as it was not within the purview of Utah Code Ann. § 63-63a-1.

SUMMARY OF ARGUMENTS

The Appellant was not sufficiently informed of the elements which Appellee was to rely upon, therefore unfairly prejudicing the Appellant in the preparation of his defense. If the necessary conditions are present, such as an insufficiency of elements on the information, the granting of a bill of particulars is not discretionary with the court. The Appellee engaged in particularly reprehensible misconduct, in threatening Appellant, outside of the courtroom, with excessive sentencing impositions for going to trial rather than accepting Appellee's plea-bargaining. During the trial, the Appellant asserted his 5th Amendment right against self-incrimination, which the trial court did not protect, but instead threatened the Appellant with contempt if he did not disclose facts which may have been incriminating, thereby unfairly prejudicing the Appellant's defense. At sentencing, the court misapplied an administrative surcharge to a non-moving violation judgment. The trial then assigned community service hours that were excessive in relation to the fine.

ARGUMENTS

Appellant was originally charged with Utah Code Ann. § 41-1a-201 and Utah Code Ann. § 41-12a-301 (See Exhibit A). The court docket

showed Appellant as charged with Utah Code Ann. § 41-1a-1303 and Utah Code Ann. § 41-12a-1303 (See Exhibit B). The information submitted by Appellee showed COUNT 1 as "Driving without insurance," West Valley City Municipal Code § 22-3-111, listing all essential elements the prosecution intended to rely upon. COUNT 2 showed as "No Utah registration" Utah Code Ann. § 41-1a-201, listing no essential elements that Appellant could reasonably prepare a defense against, therefore the information was insufficient and vague upon its face (See Exhibit C). The Appellant sought clarification by timely requesting a Bill of Particulars (See Exhibit D). The Appellee responded in opposition by stating that the city maintained an "open file policy and the availability of copies as permitted pursuant to the resolution of the West Valley City Counsel" (See Exhibit E). The trial court erroneously failed to address Appellant's motion for a Bill of Particulars at pre-trial, pursuant to U.R.Cr.P. Rule 13(a), which states in pertinent part:

"The trial court, in its discretion, may hold a pretrial conference, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. The accused shall be present unless he waives his right to appear."

The trial court instead addressed the issue at trial, thereby unfairly prejudicing the preparation of a defense by the Appellant. At trial, the Appellant notified the court that he had not been able

to adequately prepare a defense, at which point the trial court then addressed Appellant's motion for a Bill of Particulars, conveying to the Appellant that he "should have known" what the essential elements to the charges were and that the court would proceed with the trial.

Appellant should have been supplied with any information necessary to make a complete description of the charged offenses. State v. Williamson, 62 P. 1022 (1900). Appellant should have also been apprised with reasonable certainty as to what was intended to be proved and what he was required to defend. State v. Topham, 123 P. 888 (1912).

"Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'" In Re Gault, 387 U.S. 1, at 33.

The trial court's final judgment (See Exhibit F) shows that Appellant was adjudged guilty of charges that were on neither the citation nor the information, to which Appellant objected forthwith (See Exhibit G). This does not satisfy the requirement of stating a charge with such particularity so as to bar another prosecution for the same offense. By denying Appellant the information he requested, the trial court abused its discretion and denied Appellant due process, constituting reversible error.

The Appellee engaged in particularly reprehensible misconduct, in threatening Appellant, outside of the courtroom and the hearing of any other witnesses, with excessive sentencing impositions for going to trial rather than accepting Appellee's plea-bargaining. (See Exhibit H). During the trial, as a direct result of this misconduct, the Appellant capitulated over certain key issues and failed to make objections to others. This was prejudicial to Appellant's chances for having a fair trial. On this ground the case should be reversed and dismissed, or in the alternative, remanded for a new trial.

At trial, the Appellant found it necessary to take the stand in his own defense. The court acted inappropriately by threatening the Appellant with contempt when he asserted his 5th Amendment right against possibly incriminating himself in answering several of the questions asked by Appellee, to which Appellant objected (See Exhibit I), and for which reason he requested a new trial (See Exhibit J).

"The demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved." Holm v. Smilowitz, 840 P.2d 157, 164 (Utah App. 1992).

The judicial misconduct of the trial court violated the Open Courts Clause of the Utah State Constitution which "guarantees access to the courts and a judicial procedure that is based on fairness and equality." Berry v. Beech Aircraft Corp., 717 P.2d 670, 675 (Utah

1985). Therefore, as a matter of law, the trial court abused its discretion by not granting a new trial, as provided by U.R.Cr.P. Rule 24(a), and the judgment should be reversed and dismissed, or in the alternative, remanded for a new trial.

Appellant found, when he received a copy of the signed judgment of the trial court (See Exhibit F), that a 35% "surcharge" of 51.85 had been applied to a base fine amount of 188.15. However, Utah Code Ann. § 63-63a-1 states, in pertinent part:

"(1)(a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures imposed by the courts ...

(2) The surcharge shall not be imposed:

(a) upon nonmoving traffic violations;

(b) upon court orders when the offender is ordered to perform community service work in lieu of paying a fine..."

Both of the charges in this case were nonmoving violations, and Appellant was assigned community service work in lieu of the fine. On either ground, the surcharge was improperly applied. The Appellant objected to the surcharge (See Exhibit G). The applicable provisions in the Utah Code do not apply to the charges in this case and should be reversed. The misapplication of this administrative statute and abuse of judicial discretion has resulted in a situation where "A considerable amount of the money is being used for other issues." Minutes of the Judiciary Interim Committee, 15 June 1988, pg. 6, #4 (See Exhibit K, first page). A response to the above

described situation might be that the surcharge has been administered in this way for some time, and that it is now "customary" and therefore acceptable. Appellant submits that the statute and the legislative intent are clear, regardless of how poorly or for how long the surcharge has been misapplied. In fact, there was serious opposition to a surcharge being applied to any traffic violation, much less non-moving violations. Minutes of the Judiciary Interim Committee, 20 November 1985, pg. 4 (See Exhibit K, second page).

Although Appellant requested the information from the trial court, he has never been informed of the standard by which community service hours are assigned. Appellant has been reduced to finding by independent observation and interviews that the typical assignment of community service hours falls in the range of \$5-10/hour. The assignment of hours in the case at bar comes to slightly more than \$3/hour, resulting in an arbitrarily excessive assignment of hours, therefore an abuse of discretion by the court. The Appellant was denied due process by having an excessive amount of his property taken to satisfy the judgment. The Appellant should be enumerated for damages at a fair and equitable rate for the excess labor.

CONCLUSION

The trial court erred in denying Appellant's request for a Bill of Particulars, thereby preventing him from obtaining necessary clarification. The trial court compounded this error by proceeding with the trial when Appellant had still not received the necessary clarification and had not been able to prepare his defense. This error was prejudicial, and denied Appellant's substantial right to due process. Appellant respectfully submits that for these reasons the case should be reversed for denial of due process and dismissed, or in the alternative, remanded for a new trial.

The judicial and prosecutorial misconduct were prejudicial to Appellant's chance for having a fair and impartial trier of fact as well as a fair trial. Appellant respectfully submits that for this reason the case should be reversed and dismissed, or in the alternative, remanded for a new trial.

The surcharge provisions in the Utah Code do not apply to the charges in this case, and the assignment of community service hours was excessive. Appellant respectfully submits that the surcharges and excessive hours should be reversed, and the Appellant reimbursed for his time and labor at a fair and equitable rate.

If this Court considers none of the issues enumerated above as individually sufficient grounds for reversal, Appellant respectfully

submits that all of the issues, taken as a whole, combine to create sufficient cause to grant a reversal.

Dated this day 31 DECEMBER 1993

Respectfully submitted,

David W. Stokes
David W. Stokes, Appellant

CERTIFICATE OF MAILING

I, David W. Stokes, do hereby certify that on this day,
31 DECEMBER 1993, I personally mailed, first class
postage prepaid, true and correct copies of the foregoing to:

West Valley City Attorney
3600 S. Constitution Blvd. (2700 West)
~~Appellee~~ City, Utah 84119
~~WEST VALLEY~~

Utah Court of Appeals
230 S. 500 E., #400
Salt Lake City, Utah 84102

ATTACHMENTS

- A. Citation
- B. Certified trial court docket
- C. Formal information
- D. Appellant's request for Bill of Particulars
- E. Appellee's opposition to Appellant's request for Bill of Particulars
- F. Final judgment of trial court
- G. Appellant's objections to trial court's findings, motion to amend
- H. Affidavit of prosecutorial misconduct
- I. Appellant's objections to judicial misconduct
- J. Appellant's motion for reversal of verdict, dismissal, new trial
- K. Minutes of the Judiciary Interim Committee, 15 June 1988, pg. 6
Minutes of the Judiciary Interim Committee, 20 Nov 1985, pg. 4

Exhibit A

COMMERCIAL VEHICLE <input type="checkbox"/> YES <input type="checkbox"/> NO GVV _____ HAZMAT <input type="checkbox"/> YES <input type="checkbox"/> NO COMPANY/UNIT # _____ CITY/STATE _____		UNIFORM CITATION OR INFORMATION AND NOTICE TO APPEAR		CITATION NO. C196609																		
STATE OF UTAH CITY OF WEST VALLEY CITY THE DEFENDANT IS HEREBY GIVEN NOTICE TO APPEAR IN: <input checked="" type="checkbox"/> THIRD JUDICIAL CIRCUIT COURT 3636 S. CONSTITUTION BLVD. (2700 W.) WEST VALLEY CITY, UTAH 84119 801-533-7894 COURT HOURS MONDAY THROUGH FRIDAY 10:00 A.M. TO 5:00 P.M. (CLOSED SATURDAYS, SUNDAYS & HOLIDAYS)		Name (Last) SPRUE (First) DAVID (Middle) _____ Address (City) SOUTH JORDAN (State) UT (Zip) 84084 Phone 968 7319 Place of Birth _____ DOB 5-1-54 Social Security Number _____ Ht. 6 Wt. 170 Hair Brown Eyes Blue Race C M F Driver License No. AL944168 State CALIF Vehicle License No. 1JVP762 State CALIF Expires 2-92 Picture ID <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Vehicle Color Blue Vehicle Year 1977 Vehicle Make Honda Type Accident Model CRX Accident Y Y N N THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>UT</th> <th>CO</th> <th>CH</th> <th>Code #</th> <th>Misd. Cit.</th> <th>Traf.</th> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>NO UTAH REGISTRATION</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>NO INSURANCE</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> </table>			UT	CO	CH	Code #	Misd. Cit.	Traf.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	NO UTAH REGISTRATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	NO INSURANCE	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UT	CO	CH	Code #	Misd. Cit.	Traf.																	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	NO UTAH REGISTRATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>																	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	NO INSURANCE	<input type="checkbox"/>	<input checked="" type="checkbox"/>																	
<input type="checkbox"/> 3RD DISTRICT JUVENILE COURT 3522 SOUTH 700 WEST SALT LAKE CITY, UTAH 262-2601 WHEN NOTIFIED BY THE COURT		Location 4000 S 8600 WEST Mile Post No. _____ Interstate <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Direction N S E Date 2-2-92 Military Time 0801 Speeding 25 MPH Over 25 WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AS DIRECTED HEREIN. SIGNATURE X [Signature] I CERTIFY THAT COPY OF THIS CITATION OR INFORMATION WAS SERVED UPON THE DEFENDANT, ACCORDING TO THE ABOVE DATE AND I KNOW OR BELIEVE AND SO ALLEGE THAT THE ABOVE NAMED DEFENDANT DID COMMIT THE OFFENSE HEREIN SET FORTH CONTRARY TO LAW. I FURTHER CERTIFY THAT THE COURT TO WHICH THE DEFENDANT HAS BEEN DIRECTED TO APPEAR IS THE PROPER COURT PURSUANT TO SECTION 77-19. OFFICER _____ COMPLAINT _____ DATE 2-2-92 19 92 DLD USE DEFENDANT Sent to DLD _____ Docket No. _____																				
FOR COURT USE ONLY DATE OF CONVICTION/FORFEITURE _____ FINE 886 SUSPENDED _____ JAIL _____ SUSPENDED _____ PLEA/FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Minimum <input type="checkbox"/> Intermediate <input type="checkbox"/> Maximum (SEVERITY)		RIGHT INDEX																				

NOTICE TO VIOLATOR

— READ CAREFULLY —

You must either post bail or make arrangements for a hearing no later than the time indicated on your citation. If you do not wish to contest the charges, you may dispose of the citation by posting bail in person or by mail. Bail information may be obtained by calling 533-7894 between the hours of 8 A.M. to 5 P.M. Monday thru Friday excluding holidays.

If you disagree with the charges and would like a hearing call 533-7894 for an appointment.

Failure to post bail or make an appointment for a hearing within the prescribed time period constitutes a separate and additional offense, a misdemeanor, for which the law provides a penalty of up to six months in jail or \$250 fine or both. A WARRANT MAY ALSO BE ISSUED FOR YOUR ARREST.

THIRD JUDICIAL CIRCUIT COURT
 3636 S. Constitution Blvd. (2700 West)
 West Valley City, UT 84119
 801-533-7894 963-8181

LEGAL COUNSEL: Anyone charged with a violation has a right to have an attorney represent them. If you desire counsel you should obtain such before making the court appearance required by the summons.

Exhibit B

THIRD CIRCUIT COURT - WVC D O C K E T Page 1
FRIDAY MARCH 26, 1993 4:51 PM
Defendant Citation: C196609 WVP Case: 935001169 TC
Agency No.: WVP

STOKES, DAVID WAYNE

Traffic Court Case
Judge: EDWARD A. WATSON

6864 S DELORA WAY
WEST JORDAN UT 84084

NO OTN # FOR THIS CASE

<u>Charges</u>		<u>Bail</u>
Violation Date: 02/02/93		
1. OP VEH W/O INS	41-12A-302	200.00
Sev: MB Attrib: 0		
2. DRIVE W/O REG/TITLE	41-1A-1303	40.00
Sev: MC Attrib: 0		

Proceedings

02/04/93 Case filed on 02/04/93. JLB
02/11/93 ARR scheduled for 2/22/93 at 9:00 A in room 1 with EAW MHG
02/22/93 Mis Arraignment JUDGE: EDWARD A. WATSON SMT
TAPE: 10663 COUNT: 471 SMT
ATD: None Present PRO: None Present SMT
Deft is present SMT
ARR scheduled for 03/04/93 at 0900 A in room 1 with EAW SMT
DEF WISHED TO HAVE A FORMAL INFORMATION BEFORE ENTERING A PLEA. SMT
ARRAIGNMENT WAS CONTINUED. SMT
FILED: SPECIAL APPEARANCE, CHALLENGE TO CITATION AND MOTION TO SDS
DISMISS FILED BY DEF, DAVID W. STOKES. SDS
02/25/93 FILED: INFORMATION CAC
03/04/93 Mis Arraignment JUDGE: EDWARD A. WATSON SMT
TAPE: 10696 COUNT: 1233 SMT
ATD: None Present PRO: None Present SMT
Deft is present SMT
Information was read in court SMT
PTC scheduled for 03/16/93 at 0200 P in room 1 with EAW SMT
Chrg: 41-12A-302 Plea: Not Guilty SMT
Chrg: 41-1A-1303 Plea: Not Guilty SMT
03/09/93 HRG scheduled for 3/ 9/93 at 8:31 A in room 1 with EAW SLC
Hearing: JUDGE: EDWARD A. WATSON SMT
TAPE: 10703 COUNT: 2055 SMT
Deft Present SMT
ATD: None Present PRO: None Present SMT
PTC scheduled for 03/30/93 at 0830 A in room 1 with EAW SMT
PTC WAS CONTINUED AT THE REQUEST OF THE DEFENDANT WHO WILL BE SMT
OUT OF TOWN ON ORIGINAL SETTING. SMT
FILED: SPECIAL APPEARANCE, REQUEST FOR BILL OF COUNCILARS SDS
FILED BY DEF, DAVID W. STOKES. SDS
03/12/93 FILED; OPPOSITION TO REQUEST FOR BILL OF COUNCILARS VAM
03/15/93 PTC on 3/16/93 was cancelled SDS

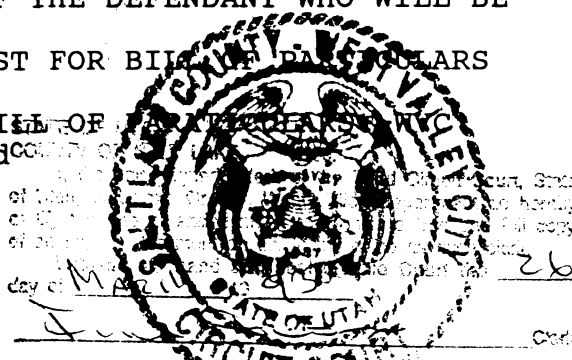


Exhibit C

Keith L. Stoney (3868)
City Prosecutor
West Valley City
3600 Constitution Boulevard
West Valley City, UT 84119
(801) 963-3331

9
EAW

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WVC)	:	
	:	
Plaintiff,	:	I N F O R M A T I O N
	:	
v.	:	
	:	Case No. 935001169
STOKES, DAVID WAYNE	:	
6864 S. DECORA WAY	:	
WEST JORDAN, UTAH 84084	:	
5/1/59	:	
	:	
Defendant.	:	

The undersigned, KEITH L. STONEY, under oath, states on information and belief that the defendant, on or about 2 FEBRUARY 1993, at the vicinity of 4000 SOUTH 5600 WEST, West Valley City, Utah, did unlawfully commit the crime(s) of:

COUNT 1: DRIVING WITHOUT INSURANCE, a Class B Misdemeanor, 22-3-111, West Valley City Municipal Code, by (1) operating a motor vehicle upon a public highway within the City limits of West Valley City without proper insurance being in effect; or (2) by permitting a motor vehicle to be operated within the City limits of West Valley City without the requisite security being in effect; or (3) after being in an accident fails to provide proof of insurance to the peace officer; or (4) after being requested to provide proof of insurance, the defendant gave false information or falsely represented that insurance was in effect.

COUNT 2: NO UTAH REGISTRATION, 41-1A-201, CLASS "C"

This information is based on evidence obtained from the following witnesses:

OFFICER LORENZ

Exhibit D

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WEST VALLEY CITY)	SPECIAL APPEARANCE
PLAINTIFF	
	REQUEST FOR BILL OF PARTICULARS
vs.	
	CASE NO. <u>935001169</u>
DAVID W. STOKES	
ACCUSED	JUDGE WATSON

COMES NOW the Accused, appearing Specially and not Generally nor Voluntarily, to request a Bill of Particulars to be filed and served upon the Accused. In support of the demand for a Bill of Particulars, the Accused states that the information filed does not sufficiently set forth the charges to enable the Accused to defend against them, neither does it set out sufficient facts to enable the Accused to prepare for a proper defense.

Dated this day TUESDAY, MARCH 9, 1993

Respectfully submitted,

David W. Stokes
David W. Stokes, Accused

CERTIFICATE OF HAND DELIVERY

I, David W. Stokes, do hereby certify that on this day, TUESDAY, MARCH 9, 1993 I hand delivered a true and correct copy of the foregoing Special Appearance, Request for Bill of

Particulars, to: Third Judicial Circuit Court, 3636 S. Constitution Blvd. (2700 West), West Valley City, Utah 84119 and the City Attorney's office of West Valley City, at the same address.

Exhibit E

PAULA J. HOUSTON (5239)
Attorney for Plaintiff
3600 Constitution Boulevard
West Valley City, UT 84119
Telephone: (801) 966-3600

IN THE FIFTH CIRCUIT COURT, SALT LAKE COUNTY
STATE OF UTAH, WEST VALLEY DEPARTMENT

WEST VALLEY CITY,)	
Plaintiff,)	OPPOSITION TO REQUEST
vs.)	FOR BILL OF PARTICULARS
DAVID W. STOKES)	
Defendant.)	Case No. 935001169

COMES NOW the Plaintiff, West Valley City, by and through its attorney Paula J. Houston, and hereby moves the Court to deny Defendant's Request for Bill of Particulars.

ARGUMENT

Rule 4 of the Utah Rules of Criminal Procedure provides for a Bill of Particulars as follows:

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of the factual information needed to set forth the essential elements of the particular offense charged.

The City submits the Information, a copy of which is attached as Appendix "A", meets this requirement. All of the factual information required to set forth the essential elements of the


offense charge is contained in the Information.

Subsection (b) states that an information may contain a probable cause statement. This statement is contained on the information. In addition, the City submits this request is satisfied by the open file policy and the availability of copies as permitted pursuant to the resolution of the West Valley City Counsel. Also, the word "may" is used, indicating disclosure of such information is discretionary with the court.

The Utah Supreme Court stated in State v. Mitchell, 571 P.2d 1351, at 1353 (1977), "The bill of particulars was not intended as a device to compel the prosecution to give an accused person a preview of the evidence on which the State relies to sustain the charge." The defendant has failed to indicate what elements are missing. The prosecution believes all essential elements are contained in the Information.

CONCLUSION

Based on the foregoing, the City submits Defendant's Motion and Request for Bill of Particulars is without merit and respectfully requests the Court deny the motion.



PAULA J. HOUSTON
Assistant City Prosecutor

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that I mailed/delivered a true and correct copy of the foregoing Opposition to Request for Bill of Particulars to David W. Stokes, Defendant, 6864 South Decora Way, Suite 102, Ogden, Utah 84401, postage prepaid, this 12th day of March, 1993.

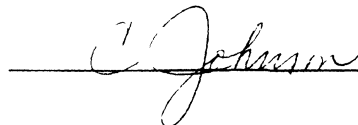


Exhibit F

THIRD CIRCUIT COURT - WVC
SALT LAKE COUNTY, STATE OF UTAH

CITY OF WEST VALLEY CITY
VS

JUDGMENT, SENTENCE
(COMMITMENT)

STOKES, DAVID WAYNE
6864 S DELORA WAY
WEST JORDAN UT 84084

CASE NO: 935001169
DOB: 05/01/54
TAPE: 10860 COUNT: 580
DATE: 05/06/93
CITATION:

THE ABOVE NAMED DEFENDANT BEING ADJUDGED GUILTY FOR THE
OFFENSE(S) AS FOLLOWS:

Charge: 41-12A-302 OP VEH W/O INS

Plea: Not Guilty	Find: Guilty - Bench
Fine: 200.00	Susp: 0.00
Jail: 8 DA	Susp: 8 DA

ACS: 0

Charge: 41-1A-1303 DRIVE W/O REG/TITLE

Plea: Not Guilty	Find: Guilty - Bench
Fine: 40.00	Susp: 0.00
Jail: 2 DA	Susp: 2 DA

ACS: 0

FEES AND ASSESSMENTS:

Fine Description: Fine- Prosecutor Spl

Credit: 0.00	Paid: 0.00	Due: 188.15
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Fine Description: Surcharge - 35%

Credit: 0.00	Paid: 0.00	Due: 51.85
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TOTAL FINES AND ASSESMENTS:

Credit: 0.00	Paid: 0.00	Due: 240.00
--------------	------------	-------------

TRACKING:

Fine Stay

07/06/93

DOCKET INFORMATION:

Sentence:

Deft present w/o Counsel, Prosecutor not present

Tape: 10860 Count: 580

Judge: EDWARD A. WATSON

Chrg: OP VEH W/O INS Plea: Not Guilty Find: Guilty - Be

Fine Amount: 200.00 Suspended: .00

Jail: 8 DAYS Suspended: 8 DAYS

Chrg: DRIVE W/O REG Plea: Not Guilty Find: Guilty - Be

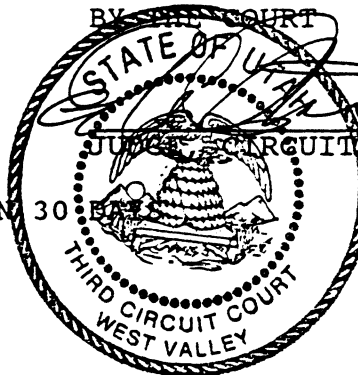
Fine Amount: 40.00 Suspended: .00

Jail: 2 DAYS Suspended: 2 DAYS

THE COURT RULED THAT THE MOTIONS FILED BY THE DEF WERE NOT PROPERLY BEFORE THIS COURT. THEY SHOULD BE FILED WITH THE APPELLATE COURT.

ON PAYMENT OF THE FINE, THE JAIL WILL BE SUSPENDED.

NOTE: APPEAL MUST BE FILED WITHIN 30 DAYS OF ENTRY OF THIS JUDGMENT.



93 MAY 11 AM 10:46
CLERK OF THE CIRCUIT COURT
WEST VALLEY DEPT.

FILED

Exhibit G

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WEST VALLEY CITY)	SPECIAL APPEARANCE
PLAINTIFF	
	OBJECTIONS TO FINDINGS
vs.	
	MOTION TO AMEND FINDINGS
DAVID W. STOKES	
ACCUSED	MOTION TO DIRECT ENTRY
	OF NEW VERDICT
	CASE NO. 935001169
	JUDGE WATSON

COMES NOW the Accused, appearing Specially and not Generally nor Voluntarily, for the purpose of objecting to the findings of fact and conclusions of law by the Court in the above entitled action.

1. The Accused objects to being assessed a 35% "surcharge" for the following reasons:

A. The Accused was assessed the surcharge without being informed and therefore was not afforded the opportunity to question, argue and/or object to said surcharge.

B. The surcharge is administrative in nature.

2. The Accused objects to the assessed fines in their entirety as being excessive and unjust for the crimes allegedly committed.

3. The Accused objects to the jail time imposed as being excessive and unjust for the crimes allegedly committed.

4. The Accused objects to the fact that the Court, in its signed commitment of judgment/sentence, finds the Accused guilty of charges not present in the formal information.

5. The Accused objects to the findings of guilt by the Court for both charges as being clearly erroneous due to the findings being against the clear weight of evidence.

WHEREFORE the Accused respectfully moves this court, for all of the foregoing reasons:

A. That the administrative surcharge assessed against the Accused be waived, and/or,

B. That the fines, in their entirety, assessed against the Accused be reduced, suspended, or waived, and/or,

C. That the jail time be reduced, suspended or waived, and/or,

D. That the Court direct the entry of a new verdict of acquittal, notwithstanding the previous verdict, due to the findings of the Court being against the clear weight of evidence.

Dated this day MONDAY, MAY 17, 1993

Respectfully submitted,

David W. Stokes
David W. Stokes, Accused

Exhibit H

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WEST VALLEY CITY)	SPECIAL APPEARANCE
PLAINTIFF	
vs.	AFFIDAVIT IN SUPPORT OF MOTION
	FOR REVERSAL OF VERDICT, ETC.
	OF DAVID STOKES
DAVID W. STOKES	
ACCUSED	CASE NO. 935001169
	JUDGE WATSON

I David Stokes do depose and state the following:

1. That I am the accused in the above entitled action.
2. That my appearance is Special, not General, nor Voluntary.
3. That I was present at the trial on Wednesday, April 14, 1993.
4. That this is testimony that I would give under oath, i.e., it would be the same.
5. Before trial commenced, the city prosecutor asked me to come with him to the hallway outside the courtroom where he again proceeded to attempt to extract admissions and confessions from me, in spite of the fact that I had made it clear to him from the pre-trial conference of Tuesday, March 30, 1993, that I had no wish to speak to him.
6. His response to my continued wish to not speak to him was that since I was being so "evasive" that I was someone he needed to "go after."
7. During one of the recesses granted by the Court during trial, the prosecutor made a point of stopping me in the hallway once again

to make comments such as: He had seen the kind of stuff I was doing in court before, that I wasn't doing myself a favor by doing it, and that I should have simply capitulated to his offers at the pre-trial conference because now I was going to really get it in court.

Dated this day MONDAY, MAY 3, 1993

Respectfully submitted,

David W. Stokes
David W. Stokes, Accused

ACKNOWLEDGMENT

STATE OF UTAH

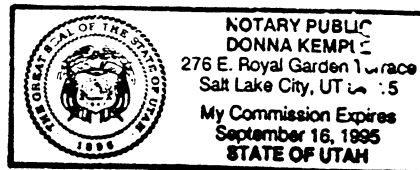
COUNTY OF SALT LAKE

On Monday, May 3, 1993, before me, the undersigned, a notary public, in and for said state, personally appeared David Stokes, known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument.

WITNESS my hand and official seal.

Donna Kempf

Notary Public



CERTIFICATE OF HAND DELIVERY

I, David W. Stokes, do hereby certify that on this day, Monday, May 3, 1993, I hand delivered a true and correct copy of the foregoing Affidavit to: Third Judicial Circuit Court, 3636 S. Constitution Blvd. (2700 West), West Valley City, Utah 84119 and the City Attorney's office of West Valley City, at the same address.

Exhibit I

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WEST VALLEY CITY)	SPECIAL APPEARANCE
PLAINTIFF	
vs.	OBJECTIONS TO
	JUDICIAL MISCONDUCT
DAVID W. STOKES	
ACCUSED	CASE NO. 935001169
	JUDGE WATSON

COMES NOW the Accused, appearing Specially and not Generally nor Voluntarily, for the purpose of offering the following objections to the judicial misconduct that took place during trial for the above entitled action.

1. The Accused objects to the fact that the Court chose to move forward in spite of Accused stating clearly his inability to prepare his defense.

2. The Accused objects to the Court denying his motion to dismiss due to his inability to prepare his defense (see objection 1 supra).

3. The Accused objects to the Court denying his motion to dismiss due to lack of evidence to support the charges.

4. The Accused strenuously objects to the Court stating that Accused's Fifth Amendment right to not incriminate himself had been waived by the mere act of taking the witness stand. To this the Accused counters with his contention that his inherent right to not self-incriminate can never be abrogated; statutes, rules, and/or stare decisis notwithstanding.

5. The Accused objects to the Court denying his renewed motion to dismiss at the close of all evidence.

Dated this day MONDAY, MAY 3, 1993

Respectfully submitted,

David W. Stokes
David W. Stokes, Accused

CERTIFICATE OF HAND DELIVERY

I, David W. Stokes, do hereby certify that on this day, Monday, May 3, 1993, I hand delivered a true and correct copy of the foregoing Special Appearance, Objections to Judicial Misconduct, to: Third Judicial Circuit Court, 3636 S. Constitution Blvd. (2700 West), West Valley City, Utah 84119 and the City Attorney's office of West Valley City, at the same address.

Exhibit J

David W. Stokes
6864 South Decora Way
West Jordan, Utah 84084

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WEST VALLEY CITY)	SPECIAL APPEARANCE
PLAINTIFF	
vs.	MOTION FOR REVERSAL OF GUILTY
	VERDICT AND/OR DISMISSAL AND/OR
	ACQUITTAL AND/OR NEW TRIAL
DAVID W. STOKES	
ACCUSED	CASE NO. 935001169
	JUDGE WATSON

COMES NOW the Accused, appearing Specially and not Generally nor Voluntarily, for the purpose of moving this Honorable Court to set aside the verdict heretofore entered in this cause, for the following reasons:

1. The statutes with which the Accused was being charged, cited on documents relevant to the case (i.e., docket, information, citation), were so inconsistent as to render it impossible for the Accused to prepare his defense.

2. The prosecution erred in opposing the Accused's motion for a bill of particulars, which would have corrected the problem in allegation 1 supra.

3. The Court erred in not granting the Accused's several motions for dismissal during trial, choosing instead to move forward in spite of Accused stating clearly his inability to prepare his defense (allegation 1 supra), and in spite of clear lack of evidence to support the charges against Accused.

4. The verdict of the Court is contrary to the weight and preponderance of the evidence.

5. The verdict of the Court finding the Accused guilty as charged is not supported by substantial evidence sufficient to justify such finding.

6. The Court erred in denying the Accused's renewed motion for dismissal at the close of all the evidence.

7. The Accused was deprived of a fair trial and substantially prejudiced by prosecutorial misconduct, consisting of threats and other out-of-court comments, both before and during trial (see attached affidavit).

8. The Accused was deprived of a fair trial and substantially prejudiced by judicial misconduct, in that the Court itself, during the course of the trial, made comments relating to the Accused's failure to testify in his own behalf.

9. The Accused was deprived of a fair trial and substantially prejudiced by judicial misconduct, when upon the Accused's taking the witness stand (due to comments described in allegation 8 supra), the Court, rather than insure the Accused be protected in all of his substantial rights during trial, instead threatened the Accused with contempt and incarceration, in spite of the fact that the Accused claimed the right not to incriminate himself and objected strenuously and repeatedly to questions he felt would be self-incriminating. This in connection with allegations 3-6 supra show a bias and prejudice on the part of the Court.

LAW

A. Petty, 18 Utah 2d 320, 422 P.2d 659 (1967). Court should determine whether witness's testimony will tend to incriminate him; if it has any doubt whether witness might be incriminated by answering question, it should not hold witness in contempt until it has first given him opportunity to explain why he claims privilege.

B. State v. Eaton, 569 P.2d 1114 (Utah 1977). Indirect comments upon defendant's failure to testify and violated defendant's right against self-incrimination.

C. Ullman, 350 U.S. 422. "Wisely or not, the Fifth Amendment protects against the compulsory self-accusation of crime without exception or qualification."

"The guarantee against self-incrimination contained in the Fifth Amendment is not only a protection against conviction and prosecution but a safeguard of conscience and human dignity... The Framers, therefore, created the federally protected right of silence and decreed that the law could not be used to pry open one's lips and make him a witness against himself..."

"Another fundamental right... [is] that no man's conscience ought to be racked by oaths imposed, to answer to questions concerning himself in matters criminal, or pretended to be so."

D. Code of Judicial Conduct, Canon 3. Disqualification must be entered in a proceeding by any judge whose impartiality might reasonably be questioned, including cases where the judge has a personal bias or prejudice concerning a party.

E. 76 ALR4th 982, §§ 2, 4. Courts found contempt abuse by judges in cases where defendants were summarily sentenced to jail without being advised of constitutional rights, and for incarcerating defendants with the knowledge that they would be entitled to release by extraordinary writ.

WHEREFORE the Accused respectfully moves this court, for all of the foregoing reasons:

A. That the verdict heretofore rendered against the Accused be reversed and the entire case be dismissed notwithstanding the verdict,

B. That the verdict heretofore rendered against the Accused be reversed and a judgment of acquittal notwithstanding the verdict be granted, or

C. That in the alternative, a new trial should be ordered.

Dated this day MONDAY, MAY 3, 1993

Respectfully submitted,

David W. Stokes
David W. Stokes, Accused

CERTIFICATE OF HAND DELIVERY

I, David W. Stokes, do hereby certify that on this day, Monday, May 3, 1993, I hand delivered a true and correct copy of the foregoing Special Appearance, Motion for Reversal of Guilty Verdict, etc., to: Third Judicial Circuit Court, 3636 S. Constitution Blvd. (2700 West), West Valley City, Utah 84119 and the City Attorney's office of West Valley City, at the same address.

Exhibit K

Sen. Rogers said that an agenda had been prepared to place this issue as a principal item for the next interim committee meeting.

MOTION: Rep. Holt made a motion to ask the Utah Judicial Council to hold final action on the support guidelines until the Legislative Judiciary Committee has had the opportunity to complete their review of the child support guidelines. The motion passed. Those voting in favor were Sens. Rogers, Black, Hillyard and Renstrom, and Reps. Holt, Atkinson, Dickamore, Harward, Skousen, Smedley, Tate and White. Voting against was Rep. Milner. Absent for the vote were Sen. Christensen and Rep. Lewis.

4. Crime Victim Reparation Fund

Rep. Harward said one of the issues to be addressed is the Crime Victim Reparation Fund into which the surcharge on fines is put. The problems are a perception problem. A considerable amount of the money is being used for other issues. For the portion that is intended to be used for victims, there is a large amount of money, \$2 million in 1986-87, \$1.6 million in 1981, and \$1.3 million in the next fiscal year, showing as balance revenue for victims. However, there is a small portion projected to be paid out to victims. Rep. Harward said that during the last fiscal year only 1.6 percent of the money allocated to be used for victims was paid to victims.

Mr. Dan Davis, Director, Crime Victim Reparations, said that about \$400,000 will go to victims this fiscal year. He said that they had actually allocated \$607,000 this fiscal year.

MOTION: Rep. Harward made a motion to request staff to draft two proposed bills subject to committee action: (1) to reduce the amount that is collected; (2) to loosen the restrictions on how the money can be spent. The motion passed. Those voting in favor were Sens. Rogers, Black, Hillyard and Renstrom, and Rep. Holt, Atkinson, Dickamore, Harward, Milner, Skousen, Smedley, Tate and White.

MOTION. Rep. Dickamore made a motion to adjourn. The motion passed unanimously with all members marked present at the meeting voting in favor. Absent for the vote was Sen. Christensen and Rep. Lewis.

Meeting adjourned at 12:10 p.m.

He reported that the bill receives the greatest portion of its moneys from a surcharge attached to all criminal fines, penalties, and forfeitures except non-moving traffic violations. Fines, penalties, and forfeitures assessed on juvenile crimes would also be subject to the surcharge. It is estimated that the surcharge would generate approximately 3.2 million dollars.

He reported that this bill has the general support of the state judges.

Sen. Hillyard made several comments in response to concerns expressed by committee members. He said the bill has a sunset date in four years. He noted that this is not something that the state will be bound to continue if it proves unsatisfactory. He indicated that counseling is a key factor in helping victims back on their feet. This bill provides for victim counseling where appropriate. The bill also allows the state to access moneys the criminal obtained through criminal activity.

Rep. Maxfield stated his objections to attaching a surcharge to traffic violation fines. Rep. Richards asked for clarification regarding the surcharge on fines for juvenile violations. He also voiced his opposition to the use of surcharges on traffic violations. Rep. Dickamore asked if juveniles were exempt from paying the surcharge. Mr. Barlow responded that they are not. John McNamara, Juvenile Court Administrator, said that a large amount of money is collected each year from juvenile offenders.

Rep. Reber asked about the costs involved with administering the program. Mr. Barlow estimated the cost at approximately \$200,000 for the first year. He stated the primary source of money to cover administration costs (96 percent) would come from the surcharge. Of this 96 percent, 85 percent would come from the surcharge on traffic fines.

Rep. Selleneit complimented Sen. Hillyard and the task force for the work they have done. However, he voiced concern that the courts would be turned into revenue-raising entities. He said that there was a lack of legislative oversight in controlling the reparations fund. He also stated his opposition to the surcharge on traffic violations. He added that he sent out a survey to his constituents and the response to the surcharge was overwhelmingly negative. He said he will vote against the bill.

MOTION: Rep. Maxfield moved that on page 15, line 6, the word "non-moving" be stricken. Rep. Cronar seconded the motion.

SUBSTITUTE MOTION: Rep. Reber moved that on page 15, line 6, "non-moving" be retained and that a period be inserted after "violation". Also on line 6, that "and all fines, penalties, and forfeitures" be deleted, along with the entirety of lines 7, 8, and 9. Rep. Fullmer seconded the motion. The motion failed in the senate.